

## MEMORANDUM

SUBJECT: OECA [Non-Concurrence or Concurrence with Comment] on Final Agency Review (FAR) for the Pesticide Registration Notice 2011-X: Pesticide Drift Labeling

FROM: Cynthia Giles  
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We appreciate the opportunity to review and comment on the Final Agency Review (FAR) package for the “Pesticide Registration Notice (PRN) 2011-X: Pesticide Drift Labeling.” The Office of Enforcement and Compliance Assurance [concurs with comment or non-concurs] on this Pesticide Registration Notice. OECA shares the significant concerns that have been raised by some of the EPA regions and states and provides the following comments.

### **I. The PRN increases the burden on EPA by requiring a showing of harm.**

If this PRN is finalized, states and the EPA would need to show that harm occurred as a result of the misuse for drift-related cases that do not involve contact to people. This change would significantly increase the burden on states and the EPA when enforcing pesticide misuse violations. Using a pesticide in a manner inconsistent with its labeling is a violation of FIFRA § 12(a)(2)(G). Proof of harm is not required for this violation unless an individual pesticide’s labeling requires it. This additional burden could hamper misuse cases even where significant residues are found in non-target areas but there is no evidence of harm. Even when evidence of harm exists, investigations and enforcement cases will require more resources and the cases will be more burdensome to litigate. This increased burden is particularly challenging now when the EPA and states are facing budget cuts thus straining already limited resources.

The burden of proving harm is also particularly challenging for chronic harm scenarios. Since chronic harm may not be apparent until a significant period of time has elapsed, the ability to obtain adequate evidence may no longer exist and the statute of limitations may have passed.

Additionally, on some occasions, proving harm may sometimes require access to personal medical records. Due to privacy laws, such records may not always be available to the investigator, further hampering the ability to bring an enforcement action.

# **Enforcement/Investigatory / Ex. 7(a)**

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